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PAROLE SUITABILITY AND HEARING PREPARATION TIPS

Per Penal Code section 3041b, parole shall normally be granted to life term inmates (and determinate term inmates entitled to parole hearings) unless they pose a current "unreasonable risk of danger" if released. This means parole is the rule, not the exception. Though things have improved greatly since *In Re Lawrence* came down in 2008 -- the grant rate since has risen (from 1990-2008 it was 3%; it is now about 25%, depending on how you count it, and the Governor is reversing fewer grants (about 15%) than his predecessors (over 75%) – it's still far less than 51%).

The Governor and the Board get away with this because the California Supreme Court (CSC) rewrote parole law to give them nearly unlimited discretion over parole through the woefully inadequate "some evidence" standard for reviewing parole decisions, effectively handcuffing courts from overturning denials. As a result, and due to prison overpopulation and criminal law reforms, you now stand a much better chance of paroling with the Board, not the courts.

Because the odds of winning your freedom remain problematic, you must know the law, how the Board, Governor, and courts apply/misapply it, and make your prison programming and parole plans so excellent and your insight into, responsibility and remorse for (IR&R) the Life Crime so complete and genuine that the Board has little choice but to grant you parole.

I hope this pamphlet will help you accomplish this. It is derived from my 17+ years-experience representing 2000+ lifers at parole hearings and in court.

THIS PAMPHLET IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT MEANT AS LEGAL ADVICE AS TO YOUR PARTICULAR SITUATION.

A. STRUCTURED DECISION MAKING FRAMEWORK ("SDMF")

A few years ago, the Board implemented SDMF as the new format for parole hearings. It's stated purpose is to streamline the hearing process to produce more consistent suitability decisions that target the inmate's risk to society if released by focusing on factors most relevant to that risk. Commissioners must consider eight separate domains (more if it is a youthful offender, elder parole, or intimate partner battery hearing), and determine if each domain aggravates, mitigates, or is neutral concerning the inmate's current risk of dangerousness. The domains are not supposed to be scored or weighed against each other, and dynamic (current) domains are generally more important than static (historical) ones. The domains are meant to be tools to help commissioners focus on what is most important to determining your suitability for parole.

Is it working? SDMF has only been in use for a few years, so it's hard to draw any firm conclusions yet. But as a general matter, I'd say it is working. More often than not.

As anyone who has sat through an eight hour parole hearing or had their 1:30pm-scheduled-hearing not start until 9:00p.m. knows, hearings are mostly much shorter now. Most are completed in less than three hours; many in less than two hours.

The hearings are much more focused on dynamic risk factors, like the inmate's programming, conduct, and pro-social growth and change, and much less on static factors like the commitment offense (CO) and priors. Mostly gone are the endless questions about every facet of the CO. Mostly gone are the detailed questions about every 115 or counseling chrono. Mostly gone are the days when commissioners would take seriously D.A.s playing 20 questions to pick at the inmate's version of the CO.

In their place, questions tend to focus on the inmate's acceptance of responsibility for, and understanding of the causative factors ("CF's) to the CO, priors, and prison misconduct. While **significant** differences between an inmate's and the so-called official versions of the crime will likely still be explored, the nit-picking of irrelevant details is mostly a thing of the past. Questions about the CO now tend to focus on the inmate's understanding of his or her risk factors (or triggers) and whether or not he or she has developed the necessary coping skills to handle the presence of them in a pro-social way.

Do some commissioners still spend too much time asking about every detail of the CO? Do some still have biases against certain types of crimes and deny parole in the face of strong evidence of rehabilitation? Do they still use confidential information about alleged misconduct that did not result in the inmate receiving an RVR or criminal prosecution? Are some commissioners still unduly swayed to deny parole by angry victims and next-of-kin? Yes, yes, yes, and yes. But Rome wasn't built in a day, and it's the trend to overall improvement in the process that I believe renders SDMF successful so far.

A detailed discussion of all the pros and cons of SDMF is beyond the scope of this pamphlet. Hopefully, I've given you a basic understanding of the reasons behind SDMF and how it is working to date, which I hope will help you better prepare for your hearing.

B. PRE-CONVICTION FACTORS

I. THE COMMITMENT OFFENSE

Since *Lawrence* and *Shaputis I and II,* unless you deny committing the CO, or your version of it differs **significantly** from the "official" version(s) of it, the facts of the CO have slowly become no longer a primary suitability factor. SDMF has accelerated this trend. Per *Lawrence, e*xcept for the worst-of-the-worst crimes, the CO can be used to deny parole only if a "nexus" exists between it and your current dangerousness ("CD"), (i.e., if it was committed while you were drunk and you've taken no AA, have 115s for pruno, deny you are an alcoholic/ drug addict, or have no relapse prevention plan ("RPP"), a nexus exists between a major cause of the CO (substance abuse) and your CD (a likelihood you'll get drunk or high and commit crimes if released).

II. INSIGHT, RESPONSIBIILTY, & REMORSE (IR&R)

The nexus to current dangerousness can be created by lack of insight into the causative factors to the CO, failing to accept responsibility for it, whether you've developed the coping skills to ensure you won't commit crimes if released, and, to a lesser extent, because of how hard it is to gauge, whether you have genuine remorse for the CO.

Even under SDMF, inmates who deny the crime or whose version of it differs significantly from the so-called "official" version are being denied parole for "minimizing" their responsibility for it. Inmates who do not have a firm grasp of the causative factors to the CO are being denied for lack of insight.

Unfortunately, insight is very subjective and the overuse of it by the Board to deny parole was blasted by the court of appeal in *In Re Ryner*: "We question whether anyone can ever fully comprehend the myriad circumstances, feelings... that motivate conduct, let alone past misconduct. We also question whether anyone can ever adequately articulate the complexity and consequences of past misconduct and atone for it to the satisfaction of everyone…One always remains vulnerable to a charge that he… lacks sufficient insight into some aspect of past misconduct even after meaningful self-reflection and expressions of remorse…whether a person has or lacks insight is often in the eye of the beholder."

But this view is still the minority, and the Board and Governor keep using and getting away with using IR&R to deny parole/reverse grants. So you must convince the Board (and Governor) you have insight into, accept full responsibility and feel genuine remorse for your CO. You can show IR&R by writing an insight statement and submitting to the Board, and/or a letter of remorse to the victim/VNOKs (even if you may not send it). But it is far more important that you express it verbally to the psychologist and at the hearing.

There is no such thing as an "official" version of the CO. By law, the appellate opinion sets forth the facts of the crime MOST FAVORABLE TO THE PROSECUTION and the Probation Officer's Report (POR) contains mostly hearsay and unsworn statements (that are often wrong). Yet the Board, Governor, and courts generally treat these documents as gospel truth and will use significant variances between them and your version of the crime to deny you for minimizing, failing to take full responsibility, or lacking insight.

So, if your version differs **significantly** from the so-called "official version" of the CO, be sure your attorney objects at the hearing to their use as official versions of it and to using differences between versions to by themselves show that you lack IR&R.

Innocence Claims

Denying you parole for claiming innocence of the CO is illegal per Penal Code section 5011(b) and Title 15 section 2236. Still the Board often ignores this law and get away with it, based on a misinterpretation of *Shaputis II*, which the Board believes allows it to deny you for claiming innocence, unless it deems your innocence claim to be "plausible".

A few cases like *In Re Swanigan* say this is illegal, but until more courts agree with *Swanigan*, plan on trying to prove your innocence claim (or your version of the CO where you admit guilt, but your version differs significantly from the so-called "official" version) is plausible. To do so, consider submitting evidence or point to portions of the record that support your version (i.e., affidavits or trial testimony from alibi witnesses, affidavits from witnesses recanting their prior testimony). This won't be easy, but until the courts and the Board start applying the law as written, you may not have any choice.

TIPS FOR DISCUSSING IR&R

- Do not minimize your role in the CO, even if it was minimal (i.e. you weren't the shooter). Accept full responsibility (tell the Board you are just as guilty as the shooter) where appropriate. Let your attorney argue that as a matter of law you are less culpable.

BUT IF YOU WEREN'T THE ACTUAL KILLER BE CAREFUL. OUR RIGHT WING COURTS ARE LETTING D.A.s SUBMIT YOUR BOARD TESTIMONY THAT YOU TAKE FULL RESPONSIBILITY FOR THE CO AS IF YOU WERE THE ACTUAL KILLER AT SB 1437 RESENTENCING HEARINGS TO "PROVE" YOUR MALICE DURING THE HOMICIDE. DISCUSS WITH YOUR LAWYER HOW TO DEAL BEFORE YOUR PAROLE HEARING.

- Don't blame external factors, such as abusive family background, drug abuse, poverty. You can say these factors contributed to the life crime, but make clear that you were responsible for your actions (i.e., you chose to get high that day/join the gang).

- It is a good idea to prepare an insight statement and submit it to the Board (and the psychologist). **However, this is not a substitute for your testimony on insight.** Many inmates believe they can write their way out of prison. While that may have been somewhat true several years ago, when I was the first, or one of the first, attorneys to recommend to their clients to write insight statements, it isn't true anymore. For many reasons, most of which are, in my opinion, misguided, the Board now places far more importance on your oral testimony than on your writings.

So write your insight statement. But be prepared to verbalize its contents to the psychologist and Board. I suggest that you handwrite your submissions; if your writing isn't legible, submit the handwritten version along with the typed one; this is good evidence that you created your own document.

- Remorse means feeling bad about your crime, as well as understanding the suffering and pain you caused. But it must come from the heart. Don't over-intellectualize remorse.

Prepare a remorse letter to the victim/family and submit it before the hearing. **But do not try to send the letter to the victim's family. You will get in big trouble.**

Performing volunteer/charitable work and/or making contributions to charity are great ways to show remorse by showing you making amends. **Do as much of this as possible!**

Know your victim(s) name(s) and try to remember things you learned about them before, during, or even after trial. They are the real victims, not you. Only after showing remorse for them, is it okay to mention how the crime has impacted you/your family.

- Your writings should be submitted as far before the hearing as possible (at least 4-5 months before is usually good), to make sure the Board's psychologist has access to them before interviewing you. If you have a private attorney, he or she should do this for you. If all else fails, bring them with you to the hearing, but remember, the Board has a 20-page limit on **inmate writings** that may be submitted the day of the hearing.

- Evidence of your IR&R from psych evals/prior hearings can be read into the record.

- Don't just mouth clichés like "I was young and stupid". Really think about this and dig deep into yourself to find answers (both external: what was going on in your life prior to and at the time of the crime; and internal: what was it about your psychological makeup and mental state at the time that caused you to commit the crime).

- In preparing for the hearing, review your prior hearing transcripts, the statement of facts in the POR/appellate opinion, and past psych evaluations and Board reports to see what you've said about the CO. Be prepared to explain any inconsistencies between prior statements you've made and your present version of the crime.

- Before *Shaputis II*, I normally advised clients NOT to discuss the FACTS of the CO at their hearing. But *Shaputis II* gives the Board the right, if you refuse to discuss the CO or IR&R at the hearing, to use earlier statements you made about it, and to deny you parole if those statements were problematic. So, unless very good reasons exist not to, you should discuss the facts of the CO and IR&R at the parole hearing.

III. PAST CRIMINAL RECORD

While the Board may cite your "escalating pattern of criminality", "multiple crimes within short intervals", or multiple violations of probation" as aggravating factors, your priors are no longer all-that important. But if you don't admit guilt for them, the Board might believe you are minimizing them, and use this to create the nexus to CD.

So be prepared. Prior to the hearing, review your priors (write them down) and know them cold, including the disposition (i.e., dismissed, sentenced to jail, given probation) of each charge. Admit priors you did commit. And remember, you are being judged on your credibility. Even an honest mistake may lessen your credibility with the Board.

Use of arrests that did not result in a conviction is improper (although the Board will often ask, especially if you were in a gang, about crimes you committed without being caught). So long as you don't admit to a crime for which the statute of limitations has not run, (i.e., murder, rape), it is usually wise to admit to your undetected prior crimes.

IV. UNSTABLE SOCIAL HISTORY/SIGNIFICANT STRESS

These are hard factors to comprehend. The Board used to cite unstable social history (USH) as a basis for denial, even though abuse you suffered at home, hardships you were subjected to, past substance abuse, or an unstable relationship with the victim, are **not by law** evidence of USH. On the other hand, the existence of significant stress in your life at the time of the crime (i.e., severe family or emotional turmoil) is a factor the Board is required to consider and weigh IN FAVOR of granting you parole. **And if you are a youthful offender, an unstable social history is a factor in your favor.**

If this sounds confusing, that's because it is. But you need to be ready to answer honestly questions about your social history, and do not make your past sound better or worse than it was. Fortunately, under SFMF, USH is not as big an issue as it was in the past.

C. POST-CONVICTION FACTORS

I. PRISON DISCIPLINARY RECORD

Your prison behavior is obviously an important suitability factor. Under SDMF, prison misconduct is considered aggravating if you've had a 115 within the past 2-5 years, **regardless of its** severity. Recent counseling chronos are also viewed negatively by the Board, even though per established case law they are not discipline for unsuitability purposes. It's not clear whether a counseling chrono can aggravate this domain.

While the Board should differentiate between major (i.e., violence, cell phones, substance abuse) and minor 115s (i.e., out of bounds, reporting late to work) it often doesn't, especially with recent 115s. Technically, this may not be proper in the absence of a nexus between your specific behavior in the CO and the 115 (and there are cases saying it isn't), but they do it, because they believe (and claim to have research to back it up) that if you can't follow the rules in prison, you are less likely to be able to do so back in society.

It is much better to admit than deny guilt for your 115s. A 20-year-old 115 for assaulting an inmate is not relevant to your CD, UNLESS YOU MAKE IT RELEVANT BY DENYING OR MINIMIZING IT. It's like denying or minimizing your CO or priors. So, don't lie, but take as much responsibility for your 115s as is possible.

As to recent 115s, I suggest you write and submit a statement of understanding why you committed it/them, and explain that you know why obeying the rules is so vital. Again, a writing is not a substitute for your testimony, but it can help.

STAY AWAY FROM CELL PHONES!!! The Board takes cell phone 115s very seriously. Also, it is a crime for an inmate to possess a cell phone. Whatever your reasons for using the cell phone, **IT ABSOLUTELY, POSITIVELY AIN'T WORTH IT!**

II. SELF-HELP/THERAPY PROGRAMS

This is vital. The Board wants to know that you are working hard to rehabilitate yourself. By taking self-help/therapy programs (SH/T) you gain the knowledge to develop IR&R into the CO and the coping skills necessary to transition safely back in society.

But quality means far more than quantity, and it is critical that you take self-help that specifically targets your risk factors, and can show that you have internalized what you learned in those programs. If substance abuse wasn't an issue in your CO, taking 20 years of AA or NA really isn't all that helpful. And if it was an issue, and after 20 years of AA or NA, you still cannot tell the Board which steps mean the most to you, those certificates mean little. Simply put, if you cannot articulate what you've learned from each program you take, all the certificates and chronos in the world won't matter.

So do SH/T seriously, and be able to tell the Board (and its psychologists) what you've learned from what you've taken when questioned! If you can't answer easily and in-depth, they will question your sincerity in attending, giving them an excuse to deny you.

If there is no relevant SH/T available in your prison, take relevant correspondence courses, get self-help books from the prison library or have your family order them for you from an on-line bookstore, then read and do book reports on them to submit for the hearing. Be prepared to discuss the books with the Board. If you read scriptures, let the Board know which portions you read and what you learned from them. **BUT REMEMBER, IT'S NOT WHAT YOU LEARNED GENERALLY FROM THE COURSE OR BOOK THAT'S IMPORTANT; IT'S WHAT YOU'VE LEARNED SPECIFICALLY ABOUT YOUR RISK FACTORS THAT IS MOST CRITICAL.**

I suggest you keep a running list of your self-help attendance and individual studies (it's a great idea to document all of your prison programming and parole plans). Submit the list for the hearing. It shows diligence and discipline, qualities the Board favors.

III. COMPREHENSIVE RISK ASSESSMENT ("CRA")

Since Lawrence held evidence of a present serious psychiatric condition and/or lack of insight MAY constitute the nexus necessary to find you currently dangerous, to have the best shot at parole, you want a violence risk rating of "low". Any higher rating, i.e. "moderate", and the Board will often say the CRA (the Board's term for psychological evaluation) is not[totally] supportive of release and will cite it as a basis for denial.

IN MY OPINION, a rating of "moderate" or lower supports release, especially if the doctor finds that you do not have a major mental illness (i.e., schizophrenia), or a diagnosis of Anti-Social Personality Disorder (ASPD). Be sure to argue it that way. FAD admits that a "moderate" rating for a lifer is equivalent to a "low" risk for a determinate term inmate. Be sure to argue this as well.

You must treat the CRA interview like a parole hearing: fully discuss the commitment offense, your past history, and IR&R in detail. The doctor's opinion that you have good IR&R for the crime is very helpful. A finding that you lack IR&R is usually devastating.

Getting a "low" risk rating does not guarantee a parole grant, even though the CSC has held that the Board acts arbitrarily and capriciously in ignoring a well-reasoned CRA. The Board considers CRA's merely tools it may use or disregard pretty much at will. Unfortunately, getting our courts to do something about this has so far been futile. So, the Board's word on the weight it accords the CRA is pretty much the final say on the matter.

Many, but not all, of the Board's psychologists are incompetent and/or biased against you. As just one example, many lifers are found to have ASPD. The vast majority of these diagnoses are wrong, and most FAD doctors don't know the difference between ASPD and the measles. Your attorney must be competent enough in the DSM-V to make intelligent objections if you receive a questionable ASPD diagnosis in your CRA.

Due to their bias against you, you must be very careful what you say to the FAD doctor. Don't be fooled by his/her friendly demeanor. It might just be a tactic for putting you at ease, so you'll drop your guard and say more than you should or not be careful how you word answers. **BE ON GUARD AT ALL TIMES.** For specific things not to say and correct ways to explain certain matters, during the interview, review my hearing preparation dos and don'ts below. But preparing with your lawyer is more important.

You have the right to attach a rebuttal to the evaluation listing any factual errors in it or places where you were misquoted. You must exercise that right. Review the CRA carefully and prepare the rebuttal. Do not argue against the doctor's conclusions; that is your attorney's job. But the Board will only invalidate a CRA if there is one or more significant factual error in it **and** the error directly impacted your risk of violence rating. So your rebuttal is the essential first step to your attorney trying to invalidate the CRA.

Unfortunately, the Board often does not follow its rules for when a factual error in the evaluation invalidates the doctor's conclusions and mandates you be given a new CRA. But still do the rebuttal, because the Commissioners may give the CRA less weight than it otherwise would if you can show one or more serious factual errors.

If you do receive an unfavorable CRA, you will need to decide what to do. Some of the issues to consider: are there enough factual errors or at least one really significant error in the evaluation that you should try to have it invalidated; should you have an independent CRA to counter the Board's CRA (if you have the money); and if you can afford one do you have it done right away and go to your hearing as scheduled, or do you waive the hearing for a year or more and have the independent CRA done just prior to the rescheduled hearing (so it is not simply a recent rebuttal to the Board's CRA, but is also based on a year or more of growth and hopefully good programming). These pros and cons are individualized, so I cannot advise you on it in this pamphlet. Make sure to discuss them with your attorney to arrive at the best possible solution.

Fortunately, with SDMF, while the doctor's risk of violence conclusions in the CRA still matter, I'm noticing that many commissioners seem more focused on the doctor's conclusions as to whether or not the inmate has worked hard through SH/T to identify his or her primary risk factors for future violence and whether or not he or she has developed adequate coping skills for dealing with those factors in free society, than they are with the actual risk of violence conclusions, especially if the risk conclusions seem at odds with the doctor's conclusions about risk factors and coping skills.

D. PAROLE PLANS

While having viable parole plans is a factor showing suitability for parole, LACK OF PAROLE PLANS IS NOT A FACTOR SHOWING UNSUITABILITY. Nevertheless, the Board will deny parole for lack of viable parole plans, so it is in your best interests to present solid parole plans to the FAD doctor and at your hearing.

1. Support letters and what they contain are important.

- They should be addressed to the Board in Sacramento and copies sent to you and your lawyer. If you have a private lawyer, it is best that he or she submit them by email.
- They SHOULD be DATED, SIGNED and contain the author's contact information.
- They should be RECENT. Letters over 1 year old should be updated.
- They should state what support the author is offering you (i.e., financial, spiritual, emotional) to help you become a productive citizen in society
- **They may state (if true) that you expressed responsibility and remorse to the author for the CO and empathy for the victim and his/her family.**
- They should state how long the author has known you and (if true) how he or she has seen you change for the better since incarceration (if you are a youthful offender, the author should detail what you lived through growing up and how it impacted you, and how you've changed since then.) The more knowledge the letter shows of who you were, are, and what you've been doing in prison (including being able to identify some of your more noteworthy accomplishments) the better.
- The author may state (if true) that he or she feels empathy for the victim/family.

2. Residence

a. You need a letter offering you a place to live.

b. You only need one residence offer, but can submit more. But make clear which is primary and which is backup.

c. Residence in your old neighborhood may be forbidden, especially if you have past gang affiliation or it is too close to where the victim/VNOKs live). If you think this will be a problem, try to get residence offers outside your old neighborhood.

d. Offers should include assurances their home is alcohol, drug, and weapon free.

e. YOU DO NOT HAVE TO PAROLE TO THE COUNTY OF CONVICTION. You may parole to any county where you will have the best chance to succeed on parole, which is where you will reside, work, and/or where most of your support group reside.

f. You will likely have problems obtaining permission to parole out of state before being paroled. As a result, you should obtain a residence in California where you can live until your out-of-state transfer request is processed.

g. If you have an ICE hold and will or might be deported, even though California parole plans are not required, try to have them as well as plans for your home country.

h. Consider initially paroling to a transitional home (especially if you have a significant past history of substance abuse). These days, the Board seems to want almost everyone granted parole to start out at a transitional home. Don't fight it, you'll lose.

- Even though the Department of Adult Parole Operations ("DAPO") will help you find transitional housing if you cannot, it is better to have an acceptance letter for your hearing. Ask your counselor or attorney for information. There are many out there; if you try hard, you should be able to get at least one acceptance letter.

3. Job Offer/Marketable Skills

a. Having a job offer or marketable skills satisfies the factor favoring suitability.
b. The job can be anything. It can be a business owned by family or friends.
c. The job offer should be on company letterhead, dated and signed, with the company's address and phone number, expressly offering you a job upon release. It should include a description of your job title, duties, salary or rate of pay, benefits, opportunities for promotions. **IT MUST BE A REAL JOB OFFER; DAPO WILL INVESTIGATE IT**
d. One job offer is sufficient, but more than one never hurts.
e. Your marketable skill can come from a vocation or prison job, or even from a job you had BEFORE PRISON.
f. Prepare a resume and submit it for your hearing. Bring copies of all letters you sent out looking for a job and any responses you've received.
g. If you get an acceptance from a transitional home, these often include offers of employment, help finding employment, and/or job training. This will solve two problems at once.

4. **Relapse Prevention Plan ("RPP"):** T**his is critical, especially if your crime was a result of substance abuse, domestic violence, gangs, extreme anger, a severe mental health condition, or if your co was a sex offense or involved child molestation**.

a. The Board wants you to have a RPP and may deny parole if you don't have a solid one. The Board's psychologists are recommending RPPs for inmates with past substance abuse, anger, impulsivity, gang issues, or sex crimes, raising the violence risk rating on inmates who don't have one, and often stating that such inmates can lower their risks of violence ratings by developing one.

i. If you don't know how to prepare an RPP, talk to your AA instructor or a knowledgeable member about how to do so. And if the FAD doctor gave you a bad risk rating because you didn't have an RPP, be sure to argue that the risk rating should be lowered if you prepare and present one at the parole hearing.

ii. Be sure to identify your triggers, both internal (feelings, thoughts, reactions) and external (people, places, events) and explain the coping skills you've developed to help you handle each trigger.

iii. **YOU MUST BE ABLE TO EXPLAIN YOUR RPP TO THE BOARD (AND THE PSYHCOLOGIST). NO MATTER HOW STRONG IT IS ON PAPER, IF YOU CANNOT DO THIS, THEY WON'T BELIEVE YOU PREPARED IT.**

b..If you plan to attend AA/NA upon release, obtain and submit a list and schedule of meetings in the area where you plan to parole, and try to obtain a sponsor.

If you are disabled, elderly, and unable to work, if you can show you have income from Social Security, Disability, Medicare, Medi-cal, a pension from the VA or old job, an inheritance, or your support network will cover your living expenses, by law you have adequate parole plans. But be sure to provide adequate proof of this income (with the caveat that you might not want to reveal a large sum of money if the Victim or Next of Kin might try to sue you for it after you parole. Discuss this with your lawyer).

E. PAROLE HEARING AND PREPARATION DOS AND DONTS.

1. **ALWAYS DO YOUR OLSEN REVIEW**. Ensure your C-file contains everything it should and nothing it shouldn't.

- if you have a GED, High School, or College Diploma, make sure it's in there; make sure all your laudatory chronos, certificates, work reports are in there.

- make sure the disciplinary record is complete and accurate. If you were given a 115 and had it dismissed, make sure it has been removed from your C-file.

Documents often don't make it into your C-file. Documents that should be deleted from your C-file often aren't and often documents about another inmate are mistakenly put into your C-file. It is up to you to make sure your C-file is up-to-date and accurate.

2. ALWAYS attend your CRA interview and cooperate fully with the doctor.

3. DO NOT cite law to the Board. That is your attorney's job. If you do they may think you've spent more time learning law than programming and hold that against you.

4. DO NOT argue with the Board or D.A. or challenge statements they make. That is your attorney's job. Make sure he or she does it.

5. DO NOT over-sell yourself. The Board does not often like salesmen types. They like modest, soft-spoken, polite, and remorseful inmates. Be one.

- Answer the questions the Board asks you, not the ones you want them to ask (i.e., do not answer a question about your disciplinary history by telling the Board you have IR&R for the CO). The Board will slam you for having your own agenda.

- Do not tell the Board (or the psychologist) how easy it will be for you to go back out into society or they will think you are underestimating the difficulties facing you on parole and will use it to deny you parole.

- Do not tell the Board (or the psychologist) that you no longer get angry. Everyone gets angry; what has changed is that you now handle it better.

- If substance abuse was a factor in your crime, even though you've been clean and sober since incarceration, do not tell the Board (or the psychologist) that you no longer have a substance abuse problem or are not still an addict. They believe that: "once an addict, always an addict", so admit that you are one and then you can state why you believe you are unlikely ever to relapse.

6. Be aware of your body language, facial expressions, and tone of voice. The Board will be watching and judging you on everything. They may fire hard questions at you simply to see how you handle them. Be sure not to lose your temper.

7. The regs limit the D.A.'s role at the hearing to opining on your suitability for parole and asking "clarifying" questions OF THE PANEL. The D.A. may not question you, either directly or indirectly, may not object to anything, and MAY NOT GIVE THE PANEL LEGAL ADVICE. However, the Board often allows the D.A. to do so. Discuss with your lawyer how to best keep the D.A. in line and make sure he/she does so.

8. DO ask your lawyer questions and make sure he or she explains everything about the hearing process to you. If you don't understand something, ASK! And at the hearing, **NEVER TRY TO ANSWER A QUESTION YOU DON'T UNDERSTAND!**

9. DON'T let your lawyer bully you into doing something you don't want to do. You are the client and have the final say on all important issues, such as what you will or will not discuss at the hearing. If you and your attorney cannot agree on how to proceed, request a new lawyer. If you can only get one by postponing the hearing, do so.

10. On the other hand, DO listen to and consider your lawyer's advice and recommendations. To ignore them without weighing them carefully is not wise.

11. FESS UP WHEN APPROPRIATE.

- If you were in a gang admit it. Don't say things like "I just hung out with them, but I wasn't jumped in", or "I hung out but didn't commit crimes with them". The Board will think you are minimizing your past gang involvement. Admit that you were in the gang, then explain the extent of your participation.
- Admit the scope and duration of your substance abuse history.
- Admit to the priors you committed and the 115s you were guilty of.

SHOWING IR&R FOR YOUR PAST MISTAKES WORKS IN YOUR FAVOR, WHILE DENYING PAST CRIMES OR OLD 115s CREATES A PROBLEM THAT WOULDN'T OTHERWISE BE THERE AND WORKS HEAVILY AGAINST YOU.

12. Submitting a parole packet (well before the hearing) is a good idea. It should contain a **summary of your prison program** and parole plans and copies of all support letters, your Insight Statement, remorse letters, Step 8 list, Relapse Prevention Plan, book reports, and "attaboy" laudatory chronos from correctional officers and free staff.

IN MY OPINION, rather than including all of your chronos and certificates in the packet, just list them in the written summary (bring the chronos/certificates to the hearing as proof if needed). I suggest doing two lists: one covering your accomplishments since your last parole hearing, the other covering your accomplishments prior to that hearing. This will make it easier for the Board, already swamped with reading material, to read your packet. A parole packets thick with chronos/certificates will only be skimmed.

13. Hope for the best, but expect the worst. Parole is no longer a marathon, but it is still not a sprint. Many lifers who have deserved a date for years are still waiting. And even where the Board gives a date, the Governor may still reverse it. But don't lose hope. The grant rate is much higher than it was just a few years ago, and the Commissioners are, in general, much better. If only our courts were not awful, the system would be tolerable. But change is often slow, so keep doing your best to put yourself in position to be granted parole!

F. WAIVERS AND STIPULATIONS TO UNSUITABILITY

Since you may waive your hearing up to three times in a row, there is little reason ever to stipulate to unsuitability. If you request a waiver at least 45 days prior to your hearing the Board must almost always grant it. If there were good reasons why you couldn't request it at least 45 days before the hearing (i.e. your lawyer met with less than 45 days before the hearing) the Board should but often doesn't grant it. If this happens, you'll have to decide whether to stipulate to unsuitability or attend your hearing.

IN MY OPINION, you should only stipulate when the Board will likely give you a multi-year denial (i.e., where you have a recent 115 or a recent unfavorable CRA) if you go to hearing, and you don't have valid grounds for a postponement.

In these situations you **MIGHT** be better off waiving for 1-5 years than receiving a lengthy denial at the hearing. But there may be good reasons to go to hearing, even if you know you'll get a multi-year denial. What's important is that you know your options and discuss them with your lawyer. You are doing the time, you are the client, and the decision whether to waive, stipulate, or go to hearing is yours alone. But make sure you are making the best decision, based on the best information.

If you do decide to waive or stipulate, state the reasons why clearly and narrowly in the form to your best advantage. This can mitigate the damage of stipulating.

NEVER SIGN ANY WAIVER/STIP/POSTPONEMENT BEFORE READING IT AND ENSURING IT IS CORRECT. AND NEVER SIGN A BLANK FORM!

G. PROP 9 (MARSY'S LAW)/1045 PETITIONS TO ADVANCE HEARING

Even though Marsy's Law has been upheld by the CSC, it made two helpful rulings in the *Vicks* case: 1) the passage of time MIGHT be the change in circumstances necessary to entitle you to advance your hearing, and 2) the Board can and should review denials on its own to determine whether an earlier hearing should be given.

As a result, the Board has been granting many more 1045 Petitions to Advance (PTA), and now automatically reviews all 3-year denials (if the CRA didn't rate you a "high" risk of violence) about a year after the hearing (this is called a "Sua Sponte" review)

If you received longer than a 3-year Denial, consider submitting a PTA if you have any legitimate basis for doing so (you can only do so once every three years, so be sure to time the petition wisely).

When to submit your PTA is an important strategic decision. If you submit it so that your hearing will be held less than three years from your last hearing, you will not get a new CRA, a critical issue which you must factor into your decision.

H. CONFIDENTIAL INFORMATION.

The Board and Governor continue to confidential information to deny parole/reverse a grant, the substance of which they will not disclose. Usually it will be information that did not result in you receiving a 115 or prosecuted criminally. This is beyond horrible and if our courts were fair and impartial would be blatantly illegal. But they aren't. I and others have litigated this matter, so far without success, but we will keep trying. Also, there might soon be new legislation to address the issue.

Perhaps in response to pressure from the defense bar, shortly before your hearing the Board will give you and your lawyer a Board-generated 1030 which list confidential documents it believes will be used at the hearing, and provides a very brief, general description of what the document contains. While this isn't sufficient, it is a decent first step, so review this 1030 carefully and discuss how to deal with it with your lawyer.

In the meantime, make sure you object to the Board using confidential information without first giving you and your attorney access to it and sufficient time to defend against it. The objection will be overruled, but making it protects your rights.

I. *IN RE BUTLER*/TERM SETTING/CRUEL AND UNUSUAL PUNISHMENT.

The Board no longer does term calculations. If you are found suitable for parole, so long as you are past your MEPD, EPRD, etc., and didn't pick up any new convictions in prison, you will be paroled if the Governor lets the decision stand.

But the CSC overruled the second *Butler* decision, so you cannot use the old base terms from the matrices to show your time in prison is constitutionally excessive punishment.

In *In Re Dannenberg*, the CSC stated, "no prisoner can be held for a period grossly disproportionate to his individual culpability for the commitment offense. Such excessive confinement violates the Cruel & Unusual punishment clause of the Cal Constitution." The CSC basically affirmed this holding in *In re Palmer*.

What this seems to mean is if you have served **many, many years beyond the first part of your sentence** (i.e., the 25 years in a 25-life sentence), you might have a chance to be released by a court because your sentence is unconstitutionally excessive. Unfortunately, most such challenges have failed and still fail. But we will keep trying.

J. SB 260/261 (YOUTHFUL OFFENDER PAROLE HEARINGS ("YOPH"s))

If you were under 26 at the time of the CO (unless you received LWOP and were 18 or older when you committed the crime – although this might soon be changing) or the death penalty or committed certain sex crimes), and didn't commit certain serious crimes after turning 26, your remaining hearings will be YOPHs, at which, great weight must be given "**to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity**" in determining your parole suitability.

i. If you are serving a determinate sentence you will be eligible for a YOPH once you have served 15 years (including CYA or county jail time).

ii. If you are serving a life sentence of less than 25-life (concurrent/consecutive sentences and enhancements do not stack to push you to 25-life or more), you will be eligible for a YOPH once you've served 20 years (including CYA or county jail time).

iii. If you are serving a life sentence of 25 or more-life, you will be eligible for a YOPH once you've served 25 years (including CYA or county jail time).

But if you reach your MEPD or other date before you become YOPH-eligible, your next hearing will be held as a YOPH even if you haven't served (15, 20, or 25 years). And if you are found suitable, you would be eligible for immediate release, even if you caught an in-prison conviction (subject to the Governor's review).

iv. Prior to your YOPH you will be given a new or updated CRA evaluation by the Board at which the doctor is required to accord great weight to your age and circumstances at the time of the life crime.

v. **The suitability requirements in Penal Code Section 3041b and Title 15 Section II still apply to YOPHs**. But the hallmarks of your youth at the time of the life crime must be given "great weight" as well. This is contradictory, but it is what it is. But for sure your prison program, including your disciplinary record, as well as your IR&R for the life crime, will still be significant factors at your YOPH.

vi. "Hallmarks of youth" include immaturity, impulsivity, recklessness, lessened responsibility, lessened ability to anticipate and appreciate consequences, imperviousness to punishment, susceptibility to negative family/peer influences, and lessened capacity to overcome/escape dysfunctional home environments or crime-producing settings.

vii. People who knew you at or before the commitment offense (i.e.,. family, teachers, doctors, counselors) and people who have known you since the crime may submit letters at which they discuss your hallmarks of youth before and leading up to the time of the crime and/or your growth since the life crime. (see section on parole plans)

viii. Your court records could contain a wealth of relevant information on your hallmarks of youth. If you were sent to CYA for an Amenability Determination, it was made after you had a psychiatric and social worker evaluation. Those evaluations and the actual Amenability Determination should be in your C-file. Make sure they are.

ix. Other valuable sources of information may be found in your Probation Report (and possibly a supplemental POR done after the Amenability Determination), your sentencing transcript, and your plea transcript (if you pled out). Finally, your school

records, medical records, records of any therapy you were given, records from any juvenile hall, camp, or CYA placement, and from Child Protective Services, could help.

ix. If these records are inadequate, you may request a *Franklin* hearing at which what you were like and went through around the time of the commitment offense will be analyzed by an expert, whose report will be made available for your YOPH.

- whether to have a *Franklin* hearing is an individual decision to be made by you and your attorney, and is beyond the scope of this pamphlet.

MAKE SURE YOU AND YOUR ATTORNEY EMPHASIZE YOUR AGE AND CIRCUMSTANCES AT THE TIME OF THE LIFE CRIME AND CONTRAST THAT WITH HOW YOU'VE CHANGED.

K. (JUVENILE LWOP) RESENTENCING

All LWOPs who committed their life crime(s) before turning 18 are now eligible for a parole hearing after they have served 25 years in custody. We hope that these hearings will soon be extended to LWOPs who committed their life crime before turning 26. The issue is now before the CSC and also being considered by the legislature.

At the moment, if you committed your LWOP crime when you were 18 or older's, your best chance MIGHT be to seek a commutation of your sentence from LWOP to life with the possibility of parole from the Governor.

- whether to seek commutation is an individual decision to be made by you and your attorney, and is beyond the scope of this pamphlet. But I do help inmates with commutation positions, so if interested, contact me to discuss your situation.

L. THE ELDERLY PAROLE PROCESS ("25/60" NOW "20/50" HEARING").

This is a new process for inmates who are over 50 years old and have served at least 20 years of their sentence (both lifers and determinately-sentenced inmates). By law, the Board is supposed to give added weight to your age, health, and effects of long-term incarceration at the hearing, and you will be given a new or updated psychological evaluation that will focus on these issues. But so far, there are no court decisions interpreting these hearings, so exactly how much weight the Board is required to give and how they weight the factors is still not known. Stay tuned.

M. NON-VIOLENT PAROLE HEARINGS AND REVIEWS

Per Proposition 57, and subsequent court decisions, processes have been set up for early parole consideration for inmates whose commitment offense was non-violent (this process has been held to apply to 3rd strikers and some sex offenders). You will undergo a two-step jurisdictional review to determine your eligibility for a Non-Violent Parole Hearing, If you get past both reviews and are deemed eligible…

a. If you are serving an indeterminate sentence, your hearing will be much like a regular parole hearing, with essentially the same suitability requirements and denial

periods If you are also a youthful offender or elder-parole eligible, your hearing will be held according to those guidelines as well.

b. If you are serving a determinate sentence and you are determined eligible by the two-step review, you will receive a non-violent parole review ("NVPR"), which is a paper review by a hearing officer (usually a Board Commissioner or Deputy Commissioner). There is no hearing, you are not allowed to be represented by an attorney (although an attorney may prepare your letter(s) for you), you will not receive a CRA, and you will not testify under oath. You are limited to submitting a letter to the Board (you may attach exhibits), explaining why you are suitable for parole.

- about 30 days after submitting your letter, you will receive a written decision. If you are denied, you my submit a letter asking for the denial to be reversed. Soon after submitting this you will receive a written decision. If you are still denied, you are left to go to court on a habeas corpus petition if you want to appeal it further. Assuming there is no appeal granted, you will receive an NVPR every year.

- anecdotal evidence so far, shows that the NVPR process is mostly a farce: over 80% of eligible inmates have been denied parole. We are fighting this, but it is too early to tell whether or not we will win.

- I do prepare the letters for inmates and I do file habeas corpus petitions in court for them. If you are interested, feel free to contact me to discuss your case.

N. RESENTENCING PETITIONS

There is much activity, and confusion, surrounding resentencing. So far it's a big mess; DA's are fighting with each other, judges are refusing to resentence anyone, and how it all will be sorted out no one knows. This topic is beyond the scope of this pamphlet, but note that with the exception of SB 1437 and a few other laws, most resentencing laws are not retroactive, and many are not being applied fairly by trial courts, which has resulted in most applicants being denied. We hope the CSC will put a stop to this and interpret the law the way it's authors intended it to be written. But we aren't holding our breath.

The most promising resentencing avenue is Penal Code section 1170.03, which allows CDCR or the D.A. to ask the court to recall a sentence and resentence the inmate to a lesser term. What is important to understand about this, is that you cannot ask the court to do this. Only CDCR or the DA has that power. So if someone comes to you and offers to help you get your sentence recalled for money, don't bite. You're being scammed.

O. VIDEO PAROLE HEARINGS: THE GOOD, BAD, AND AN OPPORTUNITY

Since COVID, the Board is now holding all parole hearings by video, unless the inmate requires an in-person hearing to ensure effective communication. At video hearings, the inmate appears in person, but instead of facing two commissioners across a table, he or she faces them on a video screen. Ditto for the DA and any VNOKs. Your attorney is supposed to appear in-person with you, unless you waive this for a video appearance.

The good: i)commissioners appear more randomly at all prisons, instead of previously, when they were generally assigned to prisons closest to where they live; ii) DA's and VNOKs appearing by video almost certainly blunts their impact on the hearing.

The bad: i) the connection between the inmate and commissioners during the hearing is just not the same by video as it was in-person; ii) if your attorney appears by video, you will be alone in the hearing room staring at a video screen. A stressful, daunting prospect.

The opportunity: this allows private attorneys to offer representation to more inmates. I now offer a lower fee for appearing by video than in-person, which hopefully enables more financially-challenged inmates to retain a private attorney. It also allows me to represent inmates at remote prisons like Pelican Bay by video, where previously the excessive travel time and costs made representing inmates there far too expensive.

P. CLOSING THOUGHTS: DEVELOP AN EXIT STRATEGY

You need to develop and implement a plan to get paroled as quickly as possible (if you hire an attorney you should hopefully work together to develop and implement this plan until you are paroled). Ideally you've been formulating, fine-tuning, and implementing your plan since you first came to prison, but if not, get started right away.

First, you must **accurately** assess how close you are to being a viable candidate for parole. This requires brutal honesty -- as opposed to wishful or delusional thinking -- in gauging your pre-conviction factors, and the strength of your prison program your entire time incarcerated (and especially since your last hearing) by analyzing them under existing law, Board policies, and politics (which hopefully this pamphlet has given you a better understanding of) to determine how close you are to being in the ballpark for being granted parole at your next hearing.

If, after having performed this analysis, you believe you are close, your task is to develop and implement your strategy for getting a parole grant at your next hearing.

If however, after having performed this analysis, you recognize that you are not yet there, you will need to figure out what you need to do and how long it will take to get there, and develop and implement an exit strategy to get you paroled at the earliest possible date. This may be a short-term, medium-term plan, or long term-plan, and might include deciding whether to go forward with your upcoming hearing and "face the music" of a recent 115 or a poor CRA, or waiving it for a year or more until through hard work and solid programming you are better ready to face the Board (even if you will likely be denied at that hearing).

Obviously, I cannot in this pamphlet advise you on how to analyze your situation or how to develop and implement an exit strategy to fit it. That will be for you (and hopefully your lawyer) to do. But it is critical that you perform this analysis honestly, and develop an appropriate and viable exit strategy. You will be lost without it.